

**From:** Bion Schulken  
**To:** 'microsoft.atr(a)usdoj.gov'  
**Date:** 11/27/01 10:35am  
**Subject:** Microsoft Settlement

This responds to USDOJ's request for public comments regarding the antitrust settlement with Microsoft Corporation.

As a user of Microsoft products as both a consumer and information technology manager for a unit of a Fortune 500 company, I believe the remedies cited in the Proposed Final Judgement are insufficient to either correct the damage caused by Microsoft's past practices or to sufficiently preclude Microsoft from engaging in similar consumer-damaging anti-competitive behavior in the future. My comments below address specific sections of the Proposed Final Judgement.

In general, the relief provided by the judgement is neither prompt, certain nor effective. The relief is not sufficient to prevent recurrence, and the focus on middleware and the OEM distribution channel is too narrow to provide effective relief or deterrents against repeated anti-competitive activities.

Re: "Ensuring that computer manufacturers have contractual and economic freedom ...by broadly prohibiting retaliation against a computer manufacturer that supports or distributes alternative middleware or operating systems." and "requiring that Microsoft provide uniform licensing terms to the 20 largest ...computer manufacturers."

This provision does absolutely nothing to protect developers from direct retaliation. Worse, it does nothing to protect consumers (private or business/corporate) who purchase software products and upgrades either directly from Microsoft or through third party vendors. The cost and implementation time involved in changing software platforms dictates that most Microsoft users will continue to upgrade to newer versions of Microsoft products, and the judgement does nothing to protect such consumers from anti-competitive pricing and licensing tactics.

The focus on the OEM distribution channel is far too narrow to significantly inhibit anti-competitive behavior in the broad market. It leaves open other opportunities for anti-competitive behavior which will directly impact consumers and end users availability of choice and cost of ownership for several years beyond the initial purchase of computer hardware.

Re: "Ensuring that computer manufacturers have the freedom to offer, and consumers the freedom to use, non-Microsoft middleware, by requiring Microsoft to provide the ability for computer manufacturers and consumers to customize, without interference or reversal, their personal computers as to the middleware they install, use and feature ..."

This provision does not address ease of use of customization as a barrier to such activity. Microsoft can continue to create barriers to consumer

choice through continuing to create arcane interfaces which are, at best, confusing to ordinary consumers and difficult for technical staff to work around. This provision will all but ensure that ordinary, non-technical consumers will continue to be directed toward Microsoft products and services and away from competitive products and services which offer better value and ease of use.

Re: "Ensuring that Microsoft cannot thwart the purposes of the remedies ..."

This provision does nothing to penalize Microsoft for demonstrated anti-competitive behavior and does not preclude the company's continuing such behavior. The language in the provision only requires them to offer licenses, but nothing in the agreement requires them to provide reasonable licensing requirements which do not create competitive barriers.

Re: "Depriving Microsoft of the means with which to retaliate against, or induce the hindering of the development of, competing products by prohibiting Microsoft from entering into agreements that require parties to exclusively, or in a fixed percentage, promote Microsoft middleware or operating system products.

Like earlier provisions, this provision focuses too narrowly on the OEM distribution channel and does nothing to prevent Microsoft from creating barriers through unreasonable licensing agreements with end users and/or developers.

Re: "The requirements and prohibitions in the Proposed Final Judgment are supported by strong enforcement provisions, including the power to seek criminal and civil contempt sanctions and other relief in the event of a violation, and the imposition of three full-time, on-site, independent enforcement monitors..."

Regarding the claim of "strong enforcement provisions", DOJ has just sought sanctions and other relief for violations which has reached an ineffective end with this judgement. This provision just allows you to repeat this ineffective proceeding.

Further, three persons to monitor the technology development and commercial practices of a company this size is totally inadequate to provide meaningful oversight. At best it will result in a checkoff by the monitors that Microsoft, on its honor, has not violated any law or provisions of this agreement. Microsoft has demonstrated through past behavior that the company will engage in anti-competitive practices which harm consumers, and the imposition of monitors is not a sufficient deterrent to prevent the repetition of such practices.

The judgement further fails by providing no meaningful penalty against the company nor relief to consumers for Microsoft's past practices.

Regards,

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